

THE LAW OFFICES OF  
STEPHEN KAFFEE, P.C.

SUITE 660  
1920 N STREET, N.W.  
WASHINGTON, D.C. 20036

TELEPHONE: (202) 887-0610  
(301) 299-2318

FAX/VOICE MAIL: (202) 466-4553  
(301) 299-2318

June 26, 1995

DOCKET FILE COPY ORIGINAL

RECEIVED

JUN 26 1995

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Mr. William F. Caton, Acting Secretary  
Federal Communications Commission  
Room 222  
1919 M Street, N.W.  
Washington, D.C. 20554

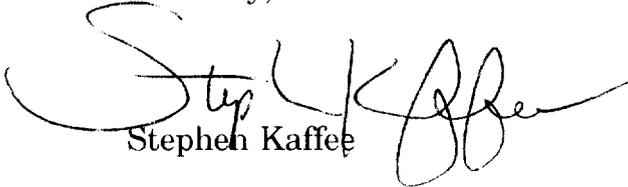
Re: Amendment of Part 95 of the Commission's Rules to allow  
Interactive Television and Data Service licensees to provide  
mobile services to subscribers; WT Docket No. 95-47; RM-8476

Dear Mr. Caton:

Transmitted herewith for filing in the above-captioned proceeding, are an  
original and five copies of the Comments of the Committee for Effective IVDS  
Regulation on the Notice of Proposed Rulemaking for IVDS.

Please contact me if you have any questions about this filing.

Sincerely,

  
Stephen Kaffee

Enclosures

No. of Copies rec'd 025  
List A B C D E

**ORIGINAL**

Before the  
**Federal Communications Commission**  
Washington, D.C. 20554

**RECEIVED**

**JUN 26 1995**

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

WT DOCKET NO. 95-4  
RM-8476

In re Matter of )  
)  
Amendment of Part 95 of the Commission's )  
Rules to allow Interactive Video and Data )  
Service licensees to provide mobile service )  
to subscribers )

**DOCKET FILE COPY ORIGINAL**

To: The Commission

**COMMENTS ON NOTICE OF  
PROPOSED RULEMAKING FOR IVDS**

The Committee for Effective IVDS Regulation (the "Committee"), by its attorney, hereby files Comments on the above-captioned Notice of Proposed Rulemaking ("NPR").<sup>1</sup> The Committee strongly supports the Commission's proposal to permit IVDS licensees to provide mobile services to subscribers. The proposed change will eliminate the unnecessary and counterproductive requirement that IVDS services be provided only to fixed locations. However, the NPR also proposes to continue several other superfluous restrictions on IVDS applications that will prevent licensees from meeting public demand for service and inhibit the efficient operation of IVDS systems. Instead of artificially circumscribing IVDS service offerings, the Commission should amend the rules to permit licensees to provide whatever services

---

<sup>1</sup> The members of the Committee are IGGW Interactive, Inc. (a licensee for the Portland, OR; Omaha, NE; and Lincoln, NE MSAs), Raveesh K. Kumra (a licensee for the San Francisco, CA MSA), Harinder Kumra (a licensee for the San Jose, CA; Santa Cruz, CA; and El Paso, TX MSAs), and Rajeesh Kumra (a licensee for the Napa, CA MSA).

they desire on these frequencies, so long as they do not cause harmful electrical interference to licensed operations on adjacent frequencies. Such an approach is the only way to ensure that this valuable spectrum is used for its highest, most productive purpose, including the rapid development and implementation of innovative services.

**The Commission Should Amend The IVDS  
Rules To Enhance The Operation Of The  
Competitive Market For Communications Services**

The one undeniable truth about regulation is that it does not function as efficiently as the free market. In recognition of that truth, government has striven in recent years to regulate only where other factors interfere with free market forces.<sup>2</sup> For new communications services, such as IVDS, the only regulation that have any justification are those which protect against harmful electrical interference. Any other regulation only interferes with the efficient operation of the free market.

For a new service, such as IVDS, the Commission should allocate frequency, do what is necessary to protect against unacceptable electrical interference to other licensees, and get out of the way. The Commission has no more business telling an IVDS operator that it cannot provide paging services, or that it cannot interconnect with other systems than it would in assigning an entertainment format (e.g., classical or pop music) to a radio station when it grants a broadcast license. For the American telecommunications industry to be a world leader, the Commission must recognize

---

<sup>2</sup> Regulation is still used for "natural" monopolies, such as electric power utilities. However, many industries which had been considered "natural" monopolies, such as local exchange service, are now being opened to competition.

that the free market is far wiser than it is. Licensees attempting to operate their systems profitably will find the highest, most efficient use for their frequency allocations, given the operational constraints necessary to avoid causing unacceptable electrical interference to others.

**The Commission Should Ease  
Regulation Of IVDS Services To Avoid  
Delays In Bringing New Applications To Market**

By eliminating unnecessary regulations, the Commission would avoid the kind of delay in implementing new services that has already occurred because it defined IVDS as a "fixed" service. EON filed its petition for rulemaking on May 11, 1994. NPR ¶1. Thus, the capability of providing mobile services over IVDS systems has already existed for more than a year. Very likely, many more months will pass before the Commission amends the rules to permit such services. Since mobile applications of IVDS have no greater, and in fact far less chance of causing significant interference,<sup>3</sup> this long delay in bringing a new application to market is wholly inappropriate. The Commission should take action to ensure that such delays, which are especially burdensome for a new service such as IVDS, do not recur.

**The Commission Should Not Specify  
Primary And Auxiliary Applications For IVDS Services**

The Commission does not provide an express reason for proposing to restrict

---

<sup>3</sup> Because the power consumption required for 20 watts of transmission power is so great, mobile applications of IVDS would inevitably operate at significantly lower power levels than fixed applications. Accordingly, the danger of interference to channel 13 from mobile operations of IVDS would be significantly lower.

mobile services on IVDS systems to auxiliary status. To the extent that the Commission based this restriction on what its "primary objective" was in creating IVDS, its proposal is particularly ill-advised. NPR, ¶7. If there is a real demand for the kind of fixed service that the Commission originally envisioned, then IVDS licensees surely will provide it. To the extent that public demand for mobile services exceeds that for fixed service, the Commission should not prevent IVDS operators from meeting that demand. Indeed, as the Commission noted in the NPR, the potential benefits to the public of mobile IVDS services are substantial. At the same time, there is no benefit -- to fixed services, to the consuming public, or to the Commission -- in allowing IVDS licensees to offer mobile services "only to fixed service subscribers." Id., ¶8.

At best, this restriction is an inappropriate effort to force IVDS to develop in accordance with the Commission's pre-conceived notions. At worst, this restriction would improperly prevent IVDS operators from competing with providers of services such as paging and dispatch, forcing consumers to pay more than they should for such services. The Commission's role is to protect and encourage competition, not to protect individual competitors. Accordingly, the proposal to classify mobile IVDS applications as auxiliary and to restrict offerings of these services is ill-advised and should not be implemented.

### **The Commission Should Eliminate The Duty Cycle Limitation For All IVDS Services**

The existing 5-seconds-per-hour duty cycle limitation is a substantial and wholly unnecessary impediment to the growth of a successful IVDS industry.

Contrary to the suggestion in paragraph 9 of the NPR, the duty cycle limitation is unrelated to protection of reception on television channel 13. Section 95.861 of the Rules provides the strongest possible economic insurance that IVDS operations will not cause harmful interference to reception of channel 13. That rule makes IVDS licensees responsible for remedying -- free of charge -- any harmful interference that their systems cause to reception of television channel 13.

The duty cycle limitation of Section 95.863 of the rules cannot provide any additional protection from harmful interference. Indeed, the fact that the same duty cycle limitation applies even in areas where there is no channel 13 demonstrates that it has another purpose.

The real purpose of the rule is to improperly inhibit what IVDS systems can do. As the NPR stated at ¶9:

This limitation would effectively preclude IVDS from abandoning interactive communications. It appears that permitting mobile services would not result in IVDS licensees providing mobile services such as personal communications service.

Such regulatory "hobbling" of a communications service is wholly inappropriate. By preventing IVDS licensees from using their spectrum fully, this limitation wastes the valuable spectrum resources that the Commission is charged with developing fully.

It appears that the real reason for the duty cycle limitation is to protect providers of "mobile services such as personal communications services" from competition from IVDS licensees. As noted above, the Commission's proper role is not to ensure the financial success of certain licensees by restricting the public's access to competitive services.

It is essential for the development of IVDS services that licensees have the flexibility to determine the duty cycles of their equipment in accordance with the demands of a particular application in the context of system capacity. The appropriate duty cycle is really a capacity issue, rather than an interference issue. IVDS licensees should be free to design its system to deal with capacity demands in the manner they deem most beneficial, just as cellular licensees are free to subdivide cells and reuse frequencies to meet capacity demands. As the NPR states, IVDS "[s]ervice offerings are determined by the licensee. NPR, n.2. For this statement to be more than meaningless rhetoric, IVDS licensees must have a free hand in dealing with duty cycles, and other system capacity and service offering issues.

**The Commission Should Not Change  
The Power Parameters For IVDS Systems**

The Commission should not amend the permissible power for RTUs based upon EON's design of mobile units. The Commission set IVDS power levels to prevent interference to channel 13. It should have no other concern with power levels. IVDS licensees should be free to determine appropriate power levels for RTUs in accordance with terrain, capacity, and investment considerations. Initially, IVDS systems may operate at higher powers to avoid unnecessary construction. As demand grows, the licensee may decide to add CTS sites and reduce the power of RTUs on its system.

The Commission also must be careful not to lock the entire industry into the alleged capabilities of one manufacturer's mobile equipment. For example, another manufacturer may be developing a mobile RTU that would operate at 200 milliwatts. Its higher-powered device might pose no greater danger of harmful interferences than

the EON design, but have great operational advantages over EON's unit. While the industry may eventually settle on a power standard for mobile RTUs, the Commission should not try to dictate that result.<sup>4</sup>

Whatever the Commission does for mobile RTUs should not affect the power levels permitted for fixed RTUs. Mobile IVDS applications may be very different from fixed applications, with very different requirements with respect to reliability of communications and error tolerance. It makes no more sense to limit fixed RTUs to 100 milliwatts because mobile RTUs are using 100 milliwatts than it would to limit mobile and transportable cellular telephones to 600 milliwatts because portable cellular telephones use that power. The Commission should leave such matters for the free market to resolve through the interplay of cost, size, operating expense, performance, and similar factors.

**IVDS Is The Perfect Service For The Commission  
To Test A Progressive New Approach To Regulation**

Although it is clear that the traditional approach to regulation of telecommunications has reached the end of its road, the form of regulation that will replace it is still far from settled. One difficulty is that the Commission has little or no experience with the deregulatory approaches that Congress is considering to replace existing regulation.

The Committee proposes that the Commission implement a regulatory regime

---

<sup>4</sup> Other manufacturers may devise systems where the mobile unit adjusts its power in accordance with its ability to talk to the CTS, just as cellular phones adjust their power.

which would allow IVDS licensees to offer any service that they desire. The only restriction on IVDS operations would be the interference protection for television channel 13 already in place in Section 95.861 of the rules. So long as they did not cause harmful interference to channel 13 or other IVDS systems, IVDS licensees could offer whatever services they believed would find a market, using whatever service parameters they deemed appropriate.

IVDS offers the perfect opportunity for the Commission to test this innovative approach to regulating telecommunications services. Because IVDS is a new service with no operating tradition, the Commission need not fear the disruptive effects that radical change can sometimes have on customers and operators. Because IVDS licensees have no market power, there is no danger that their entry into existing markets will adversely affect the competitive situation in those markets.

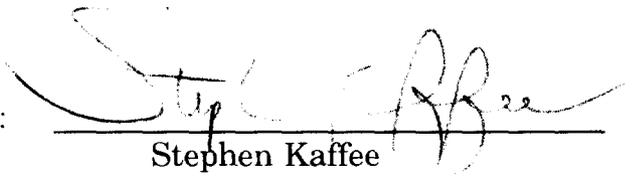
Applying such a regulatory regime to IVDS will also maximize the chances that the Commission will ultimately receive auction payments from licensees. Under the approach to regulation that the NPR proposes, the Commission could face massive defaults by IVDS licensees if the public does not desire the interactive services that the Commission envisions. The regulatory approach that the Committee proposes would allow the licensee to design services to suit the demand in its market. To the extent that public desires interactive services, IVDS licensees will have every incentive to provide them. However, if the demand for interactive service does not exist, IVDS licensees will be able to move quickly into businesses where there is demand.

## Conclusion

For the reasons given above, the Committee urges the Commission to amend its regulations to allow IVDS licensees to provide mobile services, to remove the existing restrictions on duty cycle, and not to restrict mobile services to auxiliary status. Rather, the Commission should remove all restrictions on IVDS services except for those in Section 95.861, so that IVDS licensees will have maximum flexibility in fashioning services to meet demand.

Respectfully submitted,

COMMITTEE FOR EFFECTIVE IVDS REGULATION

By:   
Stephen Kaffee

Law Offices of Stephen Kaffee, P.C.  
1920 N Street, N.C., Suite 660  
Washington, D.C. 20036  
(202) 887-0610

Its Attorney

June 26, 1995